

**Plaintiffs' Memorandum in Opposition
to Joint Motion for Summary
Judgment for Failure to Prove Fault
Element of Public Nuisance Claims**

**Ex 6 – Zimmerman Tr. (8-3-18)
Excerpts**

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 - - -

5 IN RE: NATIONAL : MDL NO. 2804
6 PRESCRIPTION OPIATE :
7 LITIGATION :

8 : CASE NO.
9 THIS DOCUMENT : 1:17-MD-2804
10 RELATES TO ALL CASES:
11 : Hon. Dan A.
12 : Polster
13 - - -

14 Friday, August 3, 2018
15 - - -

16 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
17 CONFIDENTIALITY REVIEW
18 - - -

19 Videotaped deposition of
20 CHRISTOPHER ZIMMERMAN, taken pursuant to
21 notice, was held at the law offices of
22 Reed Smith, LLP, Three Logan Square, 1717
23 Arch Street, Suite 3100, Philadelphia,
24 Pennsylvania 19103, beginning at 9:00
a.m., on the above date, before Amanda
Dee Maslynsky-Miller, a Certified
Realtime Reporter.

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20
21
22

23 GOLKOW LITIGATION SERVICES
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deps@golkow.com
24

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1 BY MR. PIFKO: 2 Q. I've just handed you what's 3 marked as Exhibit-1, which is a first 4 notice of deposition under Rule 30(b)(6). 5 It's got some topics on 6 here, there are page numbers under there. 7 The topics start on the bottom of the 8 page, Page 6. 9 Do you see that? 10 A. Yes. 11 Q. Have you seen this document 12 before? 13 A. I don't believe so. 14 Q. Have you seen these topics 15 before? 16 A. Let me take a quick look at 17 them. 18 Q. Sorry? 19 A. I'm reading through these 20 real quickly. 21 Q. Just for housekeeping, we 22 didn't go over that, but there are, 23 again, I'm sure your counsel told you 24 some of these things in preparing for the	1 A. A couple of weeks ago, 2 maybe. 3 Q. And are you prepared to 4 provide testimony on behalf of the 5 company with respect to these topics? 6 A. Within a certain time frame, 7 yes. 8 Q. I understand the time frame 9 goes from -- up until the end of 2014; is 10 that correct? 11 A. Correct. 12 MR. NICHOLAS: Just for the 13 record, just one of these topics, 14 Topic O, is one which I believe 15 there's an agreement among counsel 16 that we will respond to in writing 17 as opposed to in testimony here 18 today. 19 MR. PIFKO: Well, we can 20 meet and confer, but I don't 21 intend to take testimony on that 22 topic today in any event. 23 MR. NICHOLAS: Well, just to 24 be clear, though, I think there's
Page 15	Page 17
1 depo, but there's a couple of ground 2 rules that we have to remember because 3 we're on the record here. Try to 4 annunciate clearly if you're providing an 5 answer, give an audible response and 6 don't say words like uh-huh and uh-uh 7 because when you read it on the 8 transcript, you can't tell if it's a yes 9 or no. 10 Understood? 11 A. Yes. 12 Q. So you're reviewing the 13 document right now? 14 A. Yes. 15 Q. To be clear, my question was 16 if you had seen these topics before, 17 which start on Page 6, and they're 18 lettered A through O. 19 A. Yes. 20 Q. You have seen these topics 21 before? 22 A. I have. 23 Q. Okay. When was the first 24 time you saw these?	1 an agreement that we're responding 2 to this in writing. 3 MR. PIFKO: I'm not aware of 4 such an agreement. I'm not 5 disputing -- or I'm not taking a 6 position. 7 MR. NICHOLAS: Okay. 8 MR. PIFKO: But we can be 9 clear that that's not part of the 10 deposition today, however we end 11 up handling it. 12 MR. NICHOLAS: Okay. 13 BY MR. PIFKO: 14 Q. And so you understand that 15 you're also being deposed here in your 16 individual capacity as well. 17 Do you understand that? 18 A. Yes. 19 Q. For the most part, you can 20 imagine, the company is made up of many 21 individuals, and so it's hard to have 22 someone speak for the company. 23 So what we do in these 24 situations is we have these topics and

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<p>1 you, right now sitting in that chair for 2 the purpose of this case, are 3 AmerisourceBergen with respect to these 4 topics.</p> <p>5 Do you understand that?</p> <p>6 MR. NICHOLAS: Object to the 7 form.</p> <p>8 You can answer.</p> <p>9 THE WITNESS: Yes, I'm going 10 to be speaking on these topics.</p> <p>11 BY MR. PIFKO:</p> <p>12 Q. And from time to time, I 13 might be asking, does AmerisourceBergen 14 do this or that? And you'll be 15 answering, you know, so long as it's 16 within the scope of these topics, you'll 17 be answering on behalf of the company.</p> <p>18 Do you understand that?</p> <p>19 MR. NICHOLAS: Same 20 objection.</p> <p>21 But go ahead.</p> <p>22 THE WITNESS: Yes, I'll be 23 answering questions.</p> <p>24 BY MR. PIFKO:</p>	<p>1 for identification.) 2 - - - 3 BY MR. PIFKO: 4 Q. It's marked as Exhibit-3, 5 which is the notice that calls us here 6 today. 7 And it also, in addition to 8 calling for your 30(b)(6) testimony, it 9 calls for your individual testimony as 10 well. 11 A. Okay. 12 Q. Are you familiar with The 13 Controlled Substances Act? 14 A. Yes. 15 Q. How long have you been 16 working at AmerisourceBergen? 17 A. Since January 1990. 18 Q. And you are currently senior 19 vice president, chief compliance officer? 20 A. Correct. 21 Q. And you're also senior vice 22 president in charge of the -- what's your 23 exact title for the aspect of the company 24 that deals with compliance with the CSA?</p>
<p>1 Q. And you understand that 2 you'll be answering them on behalf of the 3 company? That's what I'm trying to get 4 at.</p> <p>5 MR. NICHOLAS: Same 6 objection.</p> <p>7 You can answer.</p> <p>8 THE WITNESS: It depends on 9 whether it's as I'm representing 10 the company. You also indicated 11 I'll be answering questions for 12 myself.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. But with respect to these 15 topics, you understand that for the date 16 range we discussed, you'll be answering 17 on behalf of the company?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And then I just 20 handed you what's marked as Exhibit-2.</p> <p>21 - - -</p> <p>22 (Whereupon, Amerisource 23 Bergen-Zimmerman Exhibit-3, Notice 24 of 30(b)(6) Deposition, was marked</p>	<p>1 A. So I'm senior vice president 2 of corporate security and regulatory 3 affairs. 4 Q. And you guys called that 5 CSRA within your company? 6 A. That's the abbreviation, 7 yes. 8 Q. So if I use the term "CSRA," 9 you understand what that means? 10 A. Yes. 11 Q. AmerisourceBergen is a 12 registrant under The Controlled 13 Substances Act, correct? 14 A. We are a DEA registrant, 15 correct. 16 Q. Have you ever heard the 17 term, I think -- I'm from California, we 18 drive a lot there, there's a phrase they 19 use that says, driving is a privilege, 20 not a right. 21 Have you ever heard that 22 kind of a phrase before? 23 A. Not really. 24 Q. AmerisourceBergen sells</p>

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<p>1 drugs, correct? 2 A. Correct. 3 Q. Included among those drugs 4 are controlled substances, correct? 5 A. Yes. 6 Q. And it's AmerisourceBergen's 7 position as a registrant that allows the 8 company to sell controlled substances, 9 correct? 10 MR. NICHOLAS: Object to the 11 form. 12 THE WITNESS: We have a 13 controlled substance registration 14 that allows us to distribute. 15 BY MR. PIFKO: 16 Q. And absent that 17 registration, it's not legal for 18 AmerisourceBergen to sell controlled 19 substances, correct? 20 A. Correct. 21 Q. So do you understand that 22 along with the privilege and the right 23 to -- the ability to sell controlled 24 substances, certain duties are attached</p>	<p>1 THE WITNESS: Can you say 2 your question one more time? 3 BY MR. PIFKO: 4 Q. The ability to sell 5 controlled substances also comes with 6 certain obligations that you must follow, 7 correct? 8 MR. NICHOLAS: Same 9 objection. 10 THE WITNESS: It's the 11 obligations of the requirements of 12 the Code of Federal Regulations. 13 BY MR. PIFKO: 14 Q. And specifically, that's The 15 Controlled Substances Act, correct? 16 A. The regulations from the 17 act, correct. 18 Q. So The Controlled Substances 19 Act and the regulations that follow, 20 correct? 21 A. Yes. 22 Q. Do you know what a duty to 23 maintain effective controls is? 24 MR. NICHOLAS: Object to the</p>
Page 23	Page 25
<p>1 to that as well. 2 Do you understand that? 3 MR. NICHOLAS: Object to the 4 form. 5 THE WITNESS: I'm not sure 6 what you're referring to as 7 "duties." 8 BY MR. PIFKO: 9 Q. Okay. You understand there 10 are restrictions on what you can do as an 11 entity selling controlled substances, 12 correct? 13 A. There's requirements that we 14 follow. I don't know if I'd refer to 15 them as restrictions, but there's 16 regulatory requirements that we have to 17 adhere to. 18 Q. Right. So my question is, 19 the ability to sell controlled substances 20 also comes with certain obligations, 21 correct? 22 MR. NICHOLAS: Object to the 23 form. 24 Go ahead.</p>	<p>1 form. 2 THE WITNESS: I'm not sure 3 what your question is. We -- I'm 4 not sure what your question is. 5 BY MR. PIFKO: 6 Q. Have you heard the phrase, 7 "duty to maintain effective controls"? 8 A. No. 9 Q. You've never heard that term 10 before? 11 A. No. 12 Q. Do you have an understanding 13 that under The Controlled Substances Act, 14 AmerisourceBergen has a duty to maintain 15 effective controls to prevent diversion 16 of certain substances? 17 A. Yes. We have to maintain 18 effective controls from diversion. I 19 just don't know duty was included in that 20 or not. 21 Q. I'll represent to you that 22 the word "duty" is in there. 23 So you do understand that 24 you have an obligation to maintain</p>

1 effective controls as part of your 2 serving as a registrant and selling 3 controlled substances? 4 A. Yes, we have an 5 obligation -- there's a regulatory 6 responsibility to have effective controls 7 to prevent diversion. 8 Q. What's your understanding of 9 what that means? 10 MR. NICHOLAS: Object to the 11 form. I object to the question. 12 It's too big. 13 THE WITNESS: I guess -- 14 that's an overarching statement. 15 If you can clarify what 16 instances within the Code of 17 Federal Regulations you're 18 referring to with the effective 19 controls, there's several 20 different areas in there. 21 MR. PIFKO: We're going to 22 have to not have any speaking 23 objections. Saying "too big" is 24 not an objection, and it's	Page 26	1 MR. PIFKO: Well, if you 2 tell the witness the question is 3 too big and then he responds, I 4 don't know how to answer it, it's 5 too big, then we've got a problem 6 here because you're telling him 7 what to say. 8 Do you understand? 9 MR. NICHOLAS: No, I'm not 10 telling him what to say. I'm 11 making an objection. So why don't 12 you just go ahead? 13 MR. PIFKO: I hope that we 14 can have compliance with the rules 15 here. And understanding that 16 we're going to be doing that, I'm 17 going to proceed. 18 BY MR. PIFKO: 19 Q. You have a duty to maintain 20 effective controls to prevent against 21 diversion, correct? 22 A. Correct. 23 Q. Do you understand what that 24 means?	Page 28
1 obviously influencing the 2 witness's testimony. 3 So you can state your 4 objection with clarity. You can 5 state form or foundation. But 6 that's all you can do, okay? 7 MR. NICHOLAS: Mark, I 8 appreciate the instruction, but 9 I'm going to have to handle my own 10 objections the way I see fit. 11 MR. PIFKO: If you're going 12 to be coaching the witness 13 throughout the day, we're going to 14 stop the deposition, we're going 15 to seek sanctions and we're going 16 come back here. 17 Do you understand that? 18 MR. NICHOLAS: You can do 19 whatever you think you need to do. 20 I'm not coaching the witness. I'm 21 stating what I think are 22 appropriate objections in the 23 appropriate manner. And you can 24 proceed.	Page 27	1 A. Yes, I understand what that 2 means. 3 Q. What is your understanding 4 of what that means? 5 A. We have to have effective 6 controls to prevent diversion, both on 7 the physical security operational side, 8 as well as ensuring we only distribute to 9 licensed entities, and a duty to report 10 suspicious orders. 11 Q. You mentioned there, "duty 12 to report suspicious orders." 13 If I refer to that as the 14 "reporting requirement," do you have an 15 understanding of that? 16 A. If you are referring to the 17 regulation that we have to design and 18 operate a system to identify suspicious 19 orders and report those suspicious orders 20 to DEA, yes. 21 Q. Okay. So at various points 22 today we might refer to that as the 23 "reporting requirement." 24 Will you understand that?	Page 29

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<p>1 BY MR. PIFKO:</p> <p>2 Q. Do you have an understanding</p> <p>3 that a drug that has a high potential for</p> <p>4 abuse could cause death to people who</p> <p>5 consume that drug?</p> <p>6 MR. NICHOLAS: Objection.</p> <p>7 Outside the scope.</p> <p>8 THE WITNESS: I don't know.</p> <p>9 I don't know.</p> <p>10 I mean, drugs -- people can</p> <p>11 overdose on drugs, and I'm aware</p> <p>12 of that, yes.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. Do you have an understanding</p> <p>15 that someone is more likely to suffer</p> <p>16 harm from a Schedule II drug than a drug</p> <p>17 that's not a Schedule II drug?</p> <p>18 MR. NICHOLAS: Objection.</p> <p>19 Outside the scope.</p> <p>20 THE WITNESS: I don't know</p> <p>21 that.</p> <p>22 BY MR. PIFKO:</p> <p>23 Q. Let's go back to our duties</p> <p>24 to prevent diversion.</p>	<p>1 Outside the scope.</p> <p>2 THE WITNESS: It calls for a</p> <p>3 conclusion. I don't know that.</p> <p>4 BY MR. PIFKO:</p> <p>5 Q. You don't know either way?</p> <p>6 A. I don't know --</p> <p>7 Q. If AmerisourceBergen does</p> <p>8 not maintain effective controls to</p> <p>9 prevent diversion of Schedule II</p> <p>10 substances, they can be diverted,</p> <p>11 correct?</p> <p>12 MR. NICHOLAS: Object to the</p> <p>13 form. Outside the scope.</p> <p>14 THE WITNESS: Again, if we</p> <p>15 don't adhere to our effective</p> <p>16 controls to prevent diversion,</p> <p>17 yes, diversion could occur.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. Let's discuss some of the</p> <p>20 company's policies and procedures with</p> <p>21 respect to diversion.</p> <p>22 Before we do that, do you</p> <p>23 agree that the laws and regulations with</p> <p>24 respect to preventing diversion remain --</p>
<p>1 You recall discussing that?</p> <p>2 MR. NICHOLAS: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. You agree that</p> <p>7 AmerisourceBergen has a duty to prevent</p> <p>8 diversion of controlled -- I keep messing</p> <p>9 that up.</p> <p>10 You agree that</p> <p>11 AmerisourceBergen has a duty to prevent</p> <p>12 diversion of Schedule II substances?</p> <p>13 MR. NICHOLAS: Object to the</p> <p>14 form. I'm not sure it's within</p> <p>15 the scope either. But I</p> <p>16 definitely object to the form.</p> <p>17 THE WITNESS: We have a duty</p> <p>18 to -- we have an obligation to</p> <p>19 prevent diversion while the drugs</p> <p>20 are under our control.</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. And if you don't carry out</p> <p>23 that duty, diversion can occur, correct?</p> <p>24 MR. NICHOLAS: Objection.</p>	<p>1 have remained unchanged for the last 45</p> <p>2 years?</p> <p>3 MR. NICHOLAS: Object to the</p> <p>4 form. Outside -- definitely</p> <p>5 outside the scope.</p> <p>6 THE WITNESS: The CSA was</p> <p>7 passed in 1970 and in -- the</p> <p>8 federal regulations that regulate</p> <p>9 our responsibilities have not</p> <p>10 changed.</p> <p>11 BY MR. PIFKO:</p> <p>12 Q. So it's your understanding</p> <p>13 that there haven't been changes with</p> <p>14 respect to the duties to prevent</p> <p>15 diversion since the passage of the</p> <p>16 statute?</p> <p>17 MR. NICHOLAS: Object to the</p> <p>18 form. Outside the scope. You're</p> <p>19 asking him a legal question.</p> <p>20 THE WITNESS: The</p> <p>21 regulatory -- the regulations have</p> <p>22 not changed.</p> <p>23 BY MR. PIFKO:</p> <p>24 Q. So AmerisourceBergen has the</p>
<p>1 Golkow Litigation Services</p>	<p>1 Page 27 (102 - 105)</p>

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<p>1 same duty under the regulations today as 2 it did in 1990, correct?</p> <p>3 MR. NICHOLAS: Object to the 4 form. You're asking him a legal 5 question. Outside the scope.</p> <p>6 THE WITNESS: We have a 7 requirement to have effective 8 controls to prevent diversion.</p> <p>9 BY MR. PIFKO:</p> <p>10 Q. And that requirement hasn't 11 changed since the passage of The 12 Controlled Substances Act, correct?</p> <p>13 MR. NICHOLAS: Object to the 14 form. Calls for a legal 15 conclusion. Outside the scope.</p> <p>16 THE WITNESS: I'm not aware 17 if the regulations have changed.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. You're familiar with the -- 20 AmerisourceBergen's practices and 21 procedures under The Controlled 22 Substances Act going back to the '80s, 23 correct?</p> <p>24 A. The '90s.</p>	<p>1 Q. Sorry, I'm not quite as 2 organized as I want to be.</p> <p>3 From the time you started 4 with AmerisourceBergen -- let's back up. 5 You started working for 6 AmerisourceBergen in the 1990s?</p> <p>7 A. January, correct.</p> <p>8 Q. Do you remember the exact 9 date and year?</p> <p>10 A. January 2nd, 1990.</p> <p>11 Q. Okay. From the time that 12 you started with AmerisourceBergen until 13 about 1998, AmerisourceBergen's 14 monitoring protocol was that every order 15 that exceeded the threshold was deemed to 16 be suspicious, correct?</p> <p>17 MR. NICHOLAS: Object to the 18 form. Outside the scope.</p> <p>19 THE WITNESS: So when I 20 started with the company, the 21 process was a two-step process. 22 It was an excessive order report 23 that was produced monthly to send 24 to DEA, and then we also had a</p>
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<p>1 Q. Okay. The '90s. 2 And you testified about the 3 company's practices with respect to 4 preventing diversion dating back to the 5 '90s in connection with the West Virginia 6 litigation, correct?</p> <p>7 MR. NICHOLAS: Objection. 8 Outside the scope. 9 Go ahead.</p> <p>10 THE WITNESS: I don't 11 remember, but --</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. You testified in 2006, 14 correct?</p> <p>15 A. 2006?</p> <p>16 Q. '16, sorry.</p> <p>17 A. Yes.</p> <p>18 Q. In preparing for this 19 deposition, did you review your 20 transcript of that proceeding?</p> <p>21 A. I looked at it, yes.</p> <p>22 Q. When was the last time you 23 looked at it?</p> <p>24 A. A couple of weeks ago.</p>	<p>1 manual process at the distribution 2 centers where the order fillers 3 would identify suspicious orders 4 and report those.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. And the orders were reported 7 after they were shipped, correct?</p> <p>8 MR. NICHOLAS: Object to the 9 form. Outside the scope.</p> <p>10 THE WITNESS: Correct.</p> <p>11 BY MR. PIFKO:</p> <p>12 Q. Prior to 2007, 13 AmerisourceBergen's system shipped all 14 orders at night and reported any orders 15 that it deemed to be suspicious the next 16 day, correct?</p> <p>17 MR. NICHOLAS: Objection. 18 Outside the scope.</p> <p>19 THE WITNESS: That was the 20 program that we developed in 21 conjunction with DEA over a 22 two-year process, that we tested a 23 new -- a process of reporting 24 suspicious orders that we</p>

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<p>1 developed with DEA and then worked 2 with them for two years testing 3 the program until they approved 4 the program in '98. 5 BY MR. PIFKO: 6 Q. I'm not asking for 7 approvals, or I didn't ask you the 8 formulation for the policy. I just asked 9 if that was a correct statement about 10 what the practice was. 11 So I'll just -- let's get a 12 clear answer to the question. 13 A. That was the practice that 14 we did in conjunction with DEA's 15 guidance. 16 Q. Just so we have a clear 17 record, the practice was to ship the 18 orders at night, and then the next day 19 any orders that were identified as 20 suspicious were then reported to the DEA; 21 is that correct? 22 A. Correct. 23 Q. Are you familiar with the 24 term "threshold"?</p>	<p>1 to identify an order of interest 2 for further review. 3 BY MR. PIFKO: 4 Q. And so the threshold is the 5 first step in the suspicious order 6 monitoring program, correct? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: It is a step. 10 BY MR. PIFKO: 11 Q. Is there a step before the 12 threshold? 13 A. We train our employees at 14 the distribution centers also to be aware 15 of, and train them on suspicious orders. 16 And if they identify a suspicious order, 17 they're to report it. 18 Q. The threshold is a key 19 factor that's used to identify 20 potentially suspicious orders, correct? 21 MR. NICHOLAS: Object to the 22 form. 23 THE WITNESS: It's an 24 identifier that we use</p>
<p>1 A. Yes. 2 Q. That's an attribute of your 3 suspicious order monitoring system, 4 correct? 5 MR. NICHOLAS: Object to the 6 form. 7 THE WITNESS: You need to 8 put it into context of time, 9 because the program has been 10 enhanced over the years. 11 BY MR. PIFKO: 12 Q. Well, for the time period 13 for which you're here to testify, which 14 ends in 2014, at all times there's been 15 some threshold requirement in the system, 16 correct? 17 A. Correct. 18 Q. Can you tell me what a 19 threshold is? 20 MR. NICHOLAS: Object to the 21 form. 22 THE WITNESS: A threshold is 23 the -- is a trigger that we have 24 put into the program to create --</p>	<p>1 Page 111 1 systematically to trigger a 2 potential order of interest. 3 BY MR. PIFKO: 4 Q. What other identifiers does 5 AmerisourceBergen use to identify a 6 potential order of interest? 7 MR. NICHOLAS: What time 8 period? Are we in the same time 9 period? 10 Before you answer, I'd like 11 to know what -- 12 MR. PIFKO: That's a 13 fact-related objection. You can't 14 make that objection. You can 15 object vague, and that's all you 16 can say. 17 MR. NICHOLAS: I wasn't 18 objecting. I was asking you to 19 clarify the question. 20 MR. PIFKO: I'm asking the 21 witness a question. 22 THE WITNESS: Can you 23 restate the question, please? 24 MR. PIFKO: Now you've</p>
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<p>1 The employees in the cage 2 can identify an order of interest by 3 identifying that order as being of an 4 unusual size, frequency or deviating from 5 the normal pattern?</p> <p>6 MR. NICHOLAS: Object to the 7 form.</p> <p>8 THE WITNESS: As I 9 indicated, they are trained, if 10 they identify something of such, 11 they are to report it.</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. And the same is true with 14 respect to employees in the vault?</p> <p>15 A. Correct.</p> <p>16 MR. NICHOLAS: Object to the 17 form.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. And the other way an order 20 can be identified as an order of interest 21 is if it exceeds a threshold that's 22 defined by AmerisourceBergen?</p> <p>23 MR. NICHOLAS: Object to the 24 form.</p>	<p>1 BY MR. PIFKO: 2 Q. Let's talk about the 3 pre-2007 period and thresholds within 4 that period. 5 Do you have an understanding 6 of how AmerisourceBergen calculated 7 thresholds before 2007?</p> <p>8 MR. NICHOLAS: Objection. 9 Outside the scope. 10 These are being answered in 11 his individual capacity.</p> <p>12 THE WITNESS: In what time 13 period?</p> <p>14 BY MR. PIFKO:</p> <p>15 Q. Well, let's start, you 16 testified in West Virginia that there 17 were certain changes made with respect to 18 the calculation of thresholds from the 19 1990s to 2007, correct?</p> <p>20 MR. NICHOLAS: Same 21 objection. 22 THE WITNESS: There was a 23 change in '98.</p> <p>24 BY MR. PIFKO:</p>
<p>1 THE WITNESS: There's a 2 threshold that identifies a 3 potentially -- an order of 4 interest, not a suspicious order. 5 And that is -- that is determined 6 by a threshold.</p> <p>7 BY MR. PIFKO:</p> <p>8 Q. Are there any other ways an 9 order can be identified as an order of 10 interest?</p> <p>11 MR. NICHOLAS: Object to the 12 form.</p> <p>13 I really would appreciate, 14 for the record, some clarity as to 15 the time frame that we're talking 16 about.</p> <p>17 Are you still unwilling to 18 do that? It seems very -- it 19 seems very plain vanilla.</p> <p>20 MR. PIFKO: We're talking 21 about the time period for which 22 you were designated, sir.</p> <p>23 THE WITNESS: Not that I am 24 aware of.</p>	<p>1 Q. Okay. Before 1998, what was 2 the method of calculating a threshold at 3 AmerisourceBergen?</p> <p>4 MR. NICHOLAS: Same 5 objection. Outside the scope of 6 the 30(b)(6).</p> <p>7 THE WITNESS: The method of 8 calculating the threshold prior to 9 that was that you would -- all 10 pharmacies would be in one 11 category, hospitals would be in 12 another category. You take all 13 the pharmacies within that 14 category and divide by the number 15 of pharmacies to come up with an 16 average volume for the month per 17 drug category. And then there was 18 a multiplier of three. Any order 19 that was over the threshold amount 20 would be produced an excessive 21 order report.</p> <p>22 BY MR. PIFKO:</p> <p>23 Q. But it would still be 24 shipped?</p>

	Page 122	Page 124
1	A. The product?	1 that two-year period.
2	Q. Yes.	2 We continued to make changes
3	A. Yes.	3 in the program, and that was the final
4	Q. After 1998, what was the	4 calculation that we came up with.
5	practice with respect to calculating	5 Q. And that calculation was
6	thresholds?	6 used from 1998 to 2007?
7	MR. NICHOLAS: Same	7 A. Yes.
8	objection. Outside the scope.	8 Q. Something happened in 2007,
9	THE WITNESS: So in 1996, we	9 correct?
10	worked with DEA, for two years,	10 A. Yes.
11	on -- in order to provide DEA with	11 Q. You had an enforcement
12	more -- we feel, more accurate	12 action brought against you by the DEA,
13	information, that we worked on a	13 correct?
14	project to where we would identify	14 A. Correct.
15	a customer based upon its own	15 Q. The three times multiplier,
16	purchase history versus all	16 where does that come from? Scratch that
17	pharmacies in one big bucket.	17 question for a second.
18	And then we calculated a	18 You agree that throughout
19	rolling four-month average of that	19 the time period we just discussed, from
20	pharmacy's purchases. And then	20 the 1990s to 2007, there was always a
21	created a multiplier of three to	21 three times multiplier used in connection
22	identify a trigger that would	22 with calculating the threshold, correct?
23	identify a suspicious order.	23 A. So for -- so from 1990 to
24	BY MR. PIFKO:	24 '98, the excessive report for ARCOS
	Page 123	Page 125
1	Q. That practice was in place	1 items, which would be your Schedule II
2	from 1998 to when?	2 and reportable III's had a three times
3	MR. NICHOLAS: Object to	3 multiplier. Non-ARCOS items, I think it
4	the -- objection. Scope. Same	4 might have been six; it might have been a
5	objection as I've been stating.	5 higher multiplier.
6	THE WITNESS: So that -- so	6 Our program that we
7	once we got approval from DEA to	7 implemented in '98 set them all at three.
8	enact that program nationally, we	8 Q. And do you know what the
9	tested it for -- with one DEA	9 methodology was in calculating that three
10	office and then several, and then	10 times multiplier?
11	Washington, D.C. approved it for	11 MR. NICHOLAS: Object to the
12	national use throughout in 1998.	12 form. And same objection, as to
13	And that was the practice	13 outside -- as to the scope here of
14	until 2007.	14 all these questions.
15	BY MR. PIFKO:	15 THE WITNESS: So the three
16	Q. So to be clear, from 2007 --	16 times multiplier had been in place
17	I'm sorry, from 1998 to 2007, the	17 when I came on board in 1990. And
18	practice was to take a specific	18 that was the program that we were
19	customer's order history over the prior	19 submitting and working with DEA in
20	four-month period and then average the	20 1990 all the way up to '96.
21	order history and multiply that by three,	21 And then when we started to
22	and that would be its threshold, correct?	22 work on the new program in
23	A. That was the agreed-upon	23 conjunction with DEA and testing
24	process through our testing with DEA over	24 it and refining it for that

<p style="text-align: right;">Page 134</p> <p>1 these numbers, 1, 2, 3, 4. And then it 2 has, Note. 3 Do you see that? 4 A. Yes. 5 Q. And it says, Factor equals 6 3. 7 Do you see that? 8 A. Yes. 9 Q. Is that what you were 10 talking about? 11 A. Yes. 12 Q. And you worked with the task 13 force that was responsible for coming up 14 with this manual? 15 A. I participated on it. I 16 wasn't the -- the industry could have one 17 member, but there was a group of people 18 within the industry. 19 Q. Did you help in drafting any 20 of the language that was in the manual? 21 A. I don't recall. 22 Q. Do you recall if the DEA 23 asked you for comment on the final 24 version of the manual?</p>	<p style="text-align: right;">Page 136</p> <p>1 A. There was a designee of one 2 person. It wasn't me. I wasn't the 3 one-person designee. 4 Q. Do you know who that was? 5 A. I don't. 6 Q. Do you know what company 7 they worked for? 8 A. I want to say it was 9 Cardinal or McKesson, but I'm not sure. 10 It wasn't ABC. 11 Q. Did you work with anyone 12 from Cardinal or McKesson -- so I asked 13 you who the designated person was, and 14 you said maybe it was Cardinal or 15 McKesson. 16 Setting aside who the 17 designated person was, when you were 18 involved with this task force, did you 19 work with anyone from McKesson or 20 Cardinal on the task force? 21 MR. NICHOLAS: Object to the 22 form. Scope. 23 Go ahead. 24 THE WITNESS: I can't</p>
<p style="text-align: right;">Page 135</p> <p>1 A. I don't. 2 Q. Your work on this task force 3 was through the Healthcare Distribution 4 Alliance, which I guess was under a 5 different name at that time? 6 A. They had the -- yeah, there 7 was -- I think there was one member, one 8 slot on the task force for the 9 wholesaler. It was through the HDMA at 10 the time, I believe it was called. 11 Q. And so the DEA said that the 12 HDMA could have a member participate on 13 the task force, and you were the selected 14 member; is that correct? 15 A. No. 16 MR. NICHOLAS: Objection to 17 the form. 18 Go ahead. 19 THE WITNESS: No. No, I was 20 not. I said I participated. The 21 group -- 22 BY MR. PIFKO: 23 Q. There was someone else who 24 was the HDMA member?</p>	<p style="text-align: right;">Page 137</p> <p>1 remember who specifically was 2 involved. 3 BY MR. PIFKO: 4 Q. But you generally feel like 5 maybe McKesson or Cardinal was involved? 6 MR. NICHOLAS: Object to the 7 form. 8 THE WITNESS: Again, I don't 9 know exactly who was involved. I 10 wouldn't be comfortable saying who 11 exactly that would be. 12 BY MR. PIFKO: 13 Q. In 2007, there was a DEA 14 enforcement action against 15 AmerisourceBergen, correct? 16 A. Yes. 17 - - - 18 (Whereupon, Amerisource 19 Bergen-Zimmerman Exhibit-5, 20 ABDCMDL 00279854-54, was marked 21 for identification.) 22 - - - 23 BY MR. PIFKO: 24 Q. I'm handing you what is</p>

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<p>1 marked as Exhibit-5. This is a document 2 Bates labeled ABDCMDL 00279854 to 65. 3 Have you seen this document 4 before? 5 A. Yes. 6 Q. Can you tell me what this 7 is? 8 A. This is our settlement and 9 release agreement with the DEA for 10 Orlando distribution center. 11 Q. So as a result of the 12 enforcement action with the DEA, this was 13 the agreement that was reached between 14 AmerisourceBergen and the DEA, correct? 15 MR. NICHOLAS: Object to the 16 form. 17 THE WITNESS: This is the 18 agreement, yes, that was made 19 after the order to show cause. 20 BY MR. PIFKO: 21 Q. Was there any money paid, 22 under this agreement, from 23 AmerisourceBergen to the United States 24 government?</p>	<p>1 And they also wanted us to 2 modify our suspicious order 3 monitoring program to stop orders 4 that we believed -- stop orders 5 that could possibly be suspicious 6 and then to any suspicious -- any 7 order we deem suspicious should 8 not be shipped. 9 BY MR. PIFKO: 10 Q. Did AmerisourceBergen agree 11 to do that? 12 A. We modified our program per 13 this agreement, correct. 14 Q. Can we refer to this 15 agreement as the shipping requirement? 16 MR. NICHOLAS: Object to the 17 form. 18 BY MR. PIFKO: 19 Q. If I say "shipping 20 requirement," can we have an 21 understanding that I'm referring to the 22 idea that you're not supposed to ship an 23 order that's deemed to be suspicious? 24 MR. NICHOLAS: I'll object</p>
<p>1 A. No. 2 Q. But as a result of this 3 agreement, AmerisourceBergen changed its 4 suspicious order monitoring program, 5 correct? 6 MR. NICHOLAS: Object to the 7 form. 8 Go ahead. 9 THE WITNESS: It modified 10 the existing program, yes. 11 BY MR. PIFKO: 12 Q. Can you tell me how the 13 agreement modified the existing program? 14 MR. NICHOLAS: Object to the 15 form. 16 THE WITNESS: So through 17 negotiations with DEA and in 18 enhancing our existing order 19 monitoring program that we had in 20 place at the time, DEA wanted us 21 to include a more in-depth due 22 diligence process in addition to 23 ensuring that we only distribute 24 products to licensed individuals.</p>	<p>1 to the form. 2 I want to understand, are 3 you asking the witness if 4 heretofore we can refer to this 5 agreement as the shipping 6 requirement? Because if so, I'd 7 object to that. 8 BY MR. PIFKO: 9 Q. Do you understand the 10 question? 11 A. Do you want to repeat it? 12 Q. All I'm asking is if, for 13 ease of reference, going forward, we can 14 refer to the idea that you don't ship an 15 order that's been identified as 16 suspicious as the shipping requirement? 17 MR. NICHOLAS: I'll object 18 to the form. And the language. 19 THE WITNESS: We never -- 20 the shipping requirement was never 21 discussed in this document and is 22 not a term that we had used in 23 presentations or requirements. 24 We chose, through our work</p>

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<p>1 with the DEA, that if we 2 defined -- ABC defined an order as 3 suspicious, that we would report 4 it and would not ship it. 5 BY MR. PIFKO: 6 Q. Did DEA ever tell you that 7 there was a -- prior to entering into 8 this agreement, did DEA ever tell you 9 that an order that's suspicious should 10 not be shipped? 11 MR. NICHOLAS: Object to the 12 form. 13 THE WITNESS: Did DEA ever 14 tell us? No. 15 BY MR. PIFKO: 16 Q. We talked about this 17 Chemical Handler's Manual and how it 18 provided guidance on the three times 19 threshold requirement, correct? 20 A. Yes. 21 Q. Did you take any guidance 22 from that manual about the idea of not 23 shipping an order that's deemed to be 24 suspicious?</p>	<p>1 Q. That's good. Thank you. 2 A. Do you want me to read the 3 whole thing? 4 Q. That's all I was asking you 5 to read. 6 MR. NICHOLAS: You asked him 7 to read the whole thing. 8 MR. PIFKO: You can read to 9 yourself the rest of that 10 paragraph, if you please. But all 11 I wanted you to read for the 12 record was that portion. 13 MR. NICHOLAS: You asked 14 him, for the record, to read the 15 whole paragraph. Are you now 16 telling him you don't want him to 17 read the whole paragraph? 18 MR. PIFKO: You don't need 19 to read any more. 20 BY MR. PIFKO: 21 Q. Did you ever consider 22 foregoing some transactions, as a result 23 of reading this document? 24 MR. NICHOLAS: Object to the</p>
<p>1 MR. NICHOLAS: Object to the 2 form. Outside the scope. 3 THE WITNESS: No. 4 BY MR. PIFKO: 5 Q. Let's take a look at that 6 manual again. I'd like to direct your 7 attention to Page 21 of that document. 8 Exhibit-4, for the record. 9 Looking at the second full 10 paragraph of Page 21, can you read that 11 to me? 12 A. On Page 21? You want me to 13 read it out loud? 14 Q. Yes, please. 15 A. When a regulated person 16 suspects that an order may be intended 17 for illicit purposes, good practice 18 requires that every reasonable effort be 19 made to resolve those suspicions. In 20 addition to making the required reports, 21 the transaction should not be completed 22 until the customer is able to eliminate 23 the suspicions. The distributor may have 24 to forego some transactions.</p>	<p>1 form. Outside the scope. 2 THE WITNESS: No. 3 - - - 4 (Whereupon, Amerisource 5 Bergen-Zimmerman Exhibit-6, 6 ABDCMDL 00269683-694, was marked 7 for identification.) 8 - - - 9 BY MR. PIFKO: 10 Q. I'm handing you what has 11 been marked as Exhibit-6. For the 12 record, these are a series of letters 13 from the Department of Justice, Bates 14 labeled ABDCMDL 00269683 to 694. 15 For the record, there's four 16 letters in this packet. This is how they 17 were produced. They are dated -- the one 18 in the back is the earliest, it's on Page 19 ABDCMDL 00269691, and it's dated 20 September 27th, 2006. And there's 21 another one dated February 7th, 2007; 22 another one dated December 27th, 2007; 23 and another one with a stamp on it, June 24 12th, 2012.</p>

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<p>1 on diversion control?</p> <p>2 MR. NICHOLAS: Objection.</p> <p>3 These are being answered in his</p> <p>4 individual capacity.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. To clean that up, all</p> <p>7 questions on this right now are in the</p> <p>8 individual capacity. I'll let you know</p> <p>9 when we're switching gears.</p> <p>10 A. To provide them update on</p> <p>11 our regulatory compliance.</p> <p>12 Q. But you said you don't meet</p> <p>13 with them regularly about diversion</p> <p>14 control.</p> <p>15 So what I was trying to</p> <p>16 understand was, why this meeting on</p> <p>17 diversion control at this time?</p> <p>18 MR. NICHOLAS: Object to the</p> <p>19 form.</p> <p>20 Go ahead.</p> <p>21 THE WITNESS: We were</p> <p>22 updating them on the diversion</p> <p>23 control program.</p> <p>24 BY MR. PIFKO:</p>	<p>1 back up.</p> <p>2 You have a sentence here</p> <p>3 that, The Controlled Substance Act,</p> <p>4 passed in 1970, is the statute</p> <p>5 establishing U.S. drug requirements for</p> <p>6 the storage and distribution of</p> <p>7 controlled substances as stipulated in</p> <p>8 the Code of Federal Regulations and</p> <p>9 enforced by the Drug Enforcement</p> <p>10 Administration.</p> <p>11 Primarily, you must have a</p> <p>12 DEA distributor registration to</p> <p>13 distribute controlled substances. You</p> <p>14 can only distribute controlled substances</p> <p>15 to a DEA-registered location. You must</p> <p>16 have adequate controls in place to</p> <p>17 prevent diversion; cages, vaults, alarms,</p> <p>18 background checks, et cetera. And, you</p> <p>19 must have a system to identify suspicious</p> <p>20 orders and report those orders to DEA</p> <p>21 when discovered.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. It says, These requirements</p>
<p>1 Q. You said there's a committee</p> <p>2 that you -- that you meet with.</p> <p>3 Is there a name for this</p> <p>4 committee?</p> <p>5 A. It's the audit committee.</p> <p>6 Q. How many members of the</p> <p>7 board of directors sit on that committee?</p> <p>8 A. I believe it's four.</p> <p>9 Q. Do you know which specific</p> <p>10 individuals?</p> <p>11 A. The names?</p> <p>12 Q. Yes.</p> <p>13 A. Lon Greenberg, David Durkin.</p> <p>14 And they just changed this last quarter,</p> <p>15 so I'm not sure if Mike Long is still on</p> <p>16 the committee or not. Mike Long. And I</p> <p>17 can't think of the other.</p> <p>18 Q. Okay. Let's go back to</p> <p>19 Exhibit-8.</p> <p>20 I do want to -- for the</p> <p>21 record to be clear, I'm asking you this</p> <p>22 as a 30(b)(6) witness.</p> <p>23 You state here, These</p> <p>24 requirements -- well, actually, let's</p>	<p>1 have gone unchanged for the past 45</p> <p>2 years.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Do you agree with that</p> <p>6 statement? You wrote it.</p> <p>7 MR. NICHOLAS: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: I did write --</p> <p>10 yes, I wrote it.</p> <p>11 BY MR. PIFKO:</p> <p>12 Q. And you agree with it?</p> <p>13 MR. NICHOLAS: Object to the</p> <p>14 form.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. At the bottom here, it says,</p> <p>18 In 2014, ABC -- and we haven't talked</p> <p>19 about that on the record, but ABC refers</p> <p>20 to AmerisourceBergen Corporation,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. It says, ABC</p> <p>24 voluntarily -- and there's more to the</p>

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<p>1 methamphetamine abuse or any other 2 area.</p> <p>3 And in the past, we had a 4 great working relationship with 5 the DEA to resolve these issues. 6 When it was methamphetamine, they 7 passed a bill, enacted regulations 8 and requirements, as we talked 9 about, with the handling.</p> <p>10 But in the opioid crisis, 11 there's no implementation of 12 bills, there was no -- there was 13 no input from DEA like they had in 14 past crises, for the opioid 15 crisis.</p> <p>16 We worked with DEA in 2007. 17 We felt we built a program that 18 was, again, I think, 19 state-of-the-art in the industry. 20 And that was the program we 21 implemented.</p> <p>22 We shared our program with 23 all the other industry 24 memberships. It wasn't -- we were</p>	<p>1 do that to enhance our program, we 2 do. It's not -- it's not static. 3 We don't just implement it in 2007 4 and there's just no changes. It's 5 a constant.</p> <p>6 BY MR. PIFKO:</p> <p>7 Q. Right. But I'm asking if 8 you had a specific discussion about 9 changing or adding to the program as a 10 result of issues stemming from the opioid 11 crisis?</p> <p>12 MR. NICHOLAS: Object to the 13 form. You're arguing.</p> <p>14 THE WITNESS: I don't know 15 if there was a specific meeting 16 titled exactly how you're stating 17 it. No, I don't know.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. Okay. I told you I would 20 ask you the question a different way. 21 Now as an individual -- or 22 as the chief compliance officer and the 23 head of the CSRA, are you aware of any 24 conversations, at any time when you</p>
<p>1 open about our process. And, you 2 know, I think that, on itself, 3 shows the efforts of 4 AmerisourceBergen.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. I'm going to ask this 7 question two different ways. 8 First, from -- for the 9 30(b)(6) period of the deposition, the 10 time period, are you aware of any 11 meetings where the company discussed the 12 opioid crisis and what steps it could 13 take to improve its diversion control 14 measures to address those issues?</p> <p>15 MR. NICHOLAS: Object to the 16 form.</p> <p>17 THE WITNESS: We 18 regularly -- the department 19 regularly meets and discusses our 20 programs and processes and what we 21 do at the distribution centers, 22 but also with this program as 23 well. And it's open dialogue.</p> <p>24 And if there's areas we can</p>	<p>1 worked at the company, where there was 2 discussion of improving diversion control 3 measures specifically in response to the 4 opioid crisis?</p> <p>5 MR. NICHOLAS: Object to the 6 form.</p> <p>7 THE WITNESS: As I 8 previously stated, there is always 9 discussions about our program and 10 our processes, not just with the 11 suspicious order monitoring but 12 how we handled things across the 13 scope of the distribution center 14 and all of our requirements.</p> <p>15 So you're asking me, did 16 have -- can I point to one 17 specific meeting? Not that I'm 18 aware of. But it was a topic that 19 we generally discussed.</p> <p>20 VIDEO TECHNICIAN: Going off 21 the record. 2:01 p.m.</p> <p>22 - - -</p> <p>23 (Whereupon, a brief recess 24 was taken.)</p>

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<p>1 THE WITNESS: I'm not going 2 to answer a hypothetical. 3 You're throwing, if somebody 4 did X, would we do Y? I'm just 5 not in a position to make those 6 kinds of statements. 7 BY MR. PIFKO: 8 Q. So it wouldn't bother you if 9 a company was coming to you to circumvent 10 a competitor's controlled substances 11 requirements? 12 MR. NICHOLAS: Object to the 13 form. Asked and answered. 14 Mischaracterizes the testimony. 15 Probably way outside the scope of 16 the 30(b)(6) as well. 17 THE WITNESS: Again, you're 18 giving me a hypothetical set of 19 circumstances and you want me to 20 give you an answer. And I can't, 21 because I don't know the -- all 22 the -- whatever else you're 23 including in your hypothetical. 24 - - -</p>	<p>1 e-mail? 2 A. I don't. 3 Q. Do you have any reason to 4 believe this is not a true and correct 5 copy of an e-mail that you received? 6 A. No, I don't doubt that. 7 Q. We did talk about the HDMA a 8 little bit earlier. 9 Did you serve -- did you 10 serve, in any capacity, on any committee 11 or board or group within the HDMA? 12 A. At some point, I was on the 13 regulatory affairs committee. And now 14 I'm on the public -- I think they call it 15 the public policy committee. 16 Q. Do you believe that you were 17 on the regulatory affairs committee at 18 around the time this e-mail was sent in 19 September of 2007? 20 A. Could have been, yes. 21 Q. Do you recall what your 22 responsibilities were as a member of the 23 regulatory affairs committee? 24 A. As a member, I mean, we</p>
<p>1 (Whereupon, Amerisource 2 Bergen-Zimmerman Exhibit-11, 3 CAH_MDL_PRIORPROD_DEA_07_00880890- 4 92, was marked for 5 identification.) 6 - - - 7 BY MR. PIFKO: 8 Q. I'm handing you what is 9 marked as Exhibit-11. 10 It's a document produced by 11 Cardinal Health in this matter, which we, 12 under the protective order, obtained 13 prior approval to use it in this 14 deposition. It's Bates labeled 15 CAH_MDL_PRIORPROD_DEA07_00880890 to 92. 16 It's an e-mail at the top 17 from Steve Reardon, dated September 11, 18 2007, to Mr. Zimmerman. The subject is, 19 Summary of September 7th meeting with DEA 20 and attachments. 21 Let me know when you're done 22 reviewing it. 23 A. Okay. 24 Q. Do you recall receiving this</p>	<p>1 would talk about regulatory issues facing 2 wholesalers. 3 Q. Regulatory issues concerning 4 The Controlled Substances Act; is that 5 correct? 6 A. It could be a whole host of 7 things. It could be destruction. It 8 wasn't only for controlled substances. 9 Anything involving wholesale distribution 10 in the healthcare chain. 11 Q. But that could include 12 controlled substances? 13 A. Yes. 14 Q. Okay. How about diversion 15 control, would that include that? 16 A. Yes. 17 Q. Do you recall HDMA setting 18 up a meeting with members of the DEA 19 around this time in 2007? 20 A. I don't. 21 Q. This is around the time of 22 some of the Dear Registrant letters. 23 Do you agree? 24 A. Yes. Yes.</p>

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<p>1 Q. Do you recall there being 2 more activity between members of the 3 industry and DEA at that time? 4 A. As I previously stated, I 5 mean, when I started, we met with DEA 6 every six months and it was a regular 7 activity. And then with the training 8 program, we met with them a lot more; 9 there was a lot more communication. 10 In 2007, this came shortly 11 after -- this is probably within weeks 12 after we got our distribution center back 13 and implemented our new program. So 14 there was a lot of activity on this 15 subject matter. 16 Q. Do you know why the HDMA 17 would have been having a meeting with the 18 DEA at this time? 19 MR. NICHOLAS: Object to the 20 form. 21 THE WITNESS: As I 22 indicated, at that time, they 23 would meet regularly with them; if 24 not every six months, every year.</p>	<p>1 one in years. People on my staff attend 2 them. 3 Q. When do you recall having 4 last attended one? 5 A. It may have been 2009. I am 6 not sure if I attended one in 2011. But 7 I know I haven't attended one for the 8 last, you know, years. 9 Q. You've always -- someone 10 from Amerisource has always been sent to 11 one of these conferences? 12 A. Usually, yes. 13 Q. And do they continue to this 14 day? 15 A. Yes. 16 Q. Do you know if there was one 17 in 2016? 18 A. I don't know if it's 2016 or 19 2017, but they have them every two years. 20 Q. Okay. Does anyone take 21 notes at these meetings? 22 A. I don't know if HDA as -- 23 does that or not. I don't know. 24 Q. Do you direct any of your</p>
<p>1 I don't know if this is a regular 2 meeting that they have to discuss 3 issues with distributors or 4 distributors wanting 5 clarification. 6 I'm not really sure what the 7 nexus of this meeting was about. 8 BY MR. PIFKO: 9 Q. Did you ever attend DEA 10 conferences? 11 A. Yes. 12 Q. How often does the DEA put 13 on conferences? 14 A. I believe every other year 15 for distributors, and then the other 16 years pharmacy practitioners. I'm not 17 positive about that. 18 But I know our meetings 19 are -- usually every two years, DEA will 20 have an industry meeting for 21 distributors. 22 Q. Do you always attend those? 23 A. I attended a lot of them 24 earlier on. I probably haven't attended</p>	<p>1 staff members to take notes of the 2 meetings if you don't attend? 3 A. They would -- I would assume 4 they would take notes. DEA usually 5 provides the slides that they produce at 6 the industry conferences. I'm not sure 7 if they put them on their website -- I'm 8 not sure if they put them on their 9 website or not. 10 Q. Do you discuss the 11 presentations or the conferences with 12 other members of the HDMA? 13 A. Do we discuss the DEA 14 conferences with HDMA members? Most of 15 them are usually there. I shouldn't say 16 all of them, but a lot of the members are 17 there at the DEA conference. 18 Q. So you meet with each other 19 while you're at these conferences? 20 You're there together? 21 A. Yes. 22 Q. Do you discuss diversion 23 control while you're at these 24 conferences?</p>

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<p>1 MR. NICHOLAS: I'm going to 2 just object to the questions, only 3 to the extent that the witness 4 said he hasn't been to one of 5 these conferences himself since 6 2009 or maybe 2011.</p> <p>7 So I want to make sure the 8 record is clear that we're, you 9 know -- he's not talking about -- 10 he can only talk about what he can 11 talk about.</p> <p>12 Go ahead.</p> <p>13 THE WITNESS: Years back, 14 yeah, we would talk about 15 regulatory issues or how we do 16 things or, you know, what -- those 17 type of things.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. Is there a meeting through 20 the HDMA, after these conferences, where 21 the members get together and discuss what 22 was said at the conference and their 23 views on the information that the DEA 24 might have shared at the conference?</p>	<p>1 Q. Do you know if he still 2 works at Cardinal Health? 3 A. He does not. 4 Q. Does he work for another 5 distributor, do you know? 6 A. He's retired. 7 Q. How about Anita Ducca, do 8 you know who that is? 9 A. I believe -- yes, I do. 10 Q. Who is she? 11 A. I believe she's vice 12 president of regulatory affairs for HDMA. 13 Q. So then Brian sends this to 14 Steve Reardon, and says, Steve, pasted 15 below please find the summary of HDMA's 16 meeting with the DEA last Friday. Please 17 let me know if you need anything else. 18 Do you see that? 19 A. Yes. 20 Q. And then it's got a summary 21 of the meeting here. 22 It says, Key takeaways from 23 the meeting were -- do you see where that 24 is?</p>
<p>1 MR. NICHOLAS: Same 2 objection for the same reason.</p> <p>3 THE WITNESS: My 4 recollection was that, you know, 5 there would be discussions prior 6 to the meetings if there's 7 questions that we wanted to bring 8 up, as an industry.</p> <p>9 I don't recall if there was 10 a structured debrief or anything 11 like that after.</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. Let's look back at 14 Exhibit-11.</p> <p>15 It says here -- well, first, 16 do you know who Brian Cherico is? 17 A. I'm not familiar with Brian. 18 Q. How about Steve Reardon? 19 A. Yes. 20 Q. Who is Steve Reardon? 21 A. He was -- I don't know if 22 he's director or senior director or vice 23 president of regulatory. I've known him 24 for quite some time.</p>	<p>1 A. Yes. 2 Q. DEA's policy was to expect 3 more than just reporting suspicious 4 orders. If there was a suspicious order, 5 the distributor should either stop the 6 delivery or should evaluate the customer 7 further before delivering it. 8 Do you see that? 9 A. Yes. 10 Q. Did you have an 11 understanding, at that time, that that 12 was DEA's position? 13 A. Yes. This was the program 14 that we had just negotiated. 15 Q. It says, Simply complying 16 with the suspicious orders regulatory 17 requirement does not mean, in the 18 agency's view, that the registrant is 19 maintaining an effective program to 20 detect and prevent diversion. 21 Do you see that? 22 A. Yes. 23 Q. Did you have an 24 understanding that that was the DEA's</p>

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<p>1 A. I don't know. I don't know. 2 Q. Well after 2007? 3 A. I don't know. After 2007, 4 we were getting 590s on existing 5 customers, as we were building our 6 program. 7 Q. I'm just asking about this 8 process that you said, at some point, you 9 undertook an effort to get it from 10 existing customers, just going through 11 and getting them, regardless of whether 12 there was an incident. 13 And I'm just trying to 14 understand -- 15 A. And I don't know -- 16 Q. -- about when that happened. 17 A. -- when that happened. I 18 don't know. 19 Q. Do you recall taking any 20 action, as a result of receiving this 21 e-mail describing the DEA's position on 22 the issues we just discussed? 23 MR. NICHOLAS: Object to the 24 form.</p>	<p>1 (Whereupon, a brief recess 2 was taken.) 3 - - - 4 VIDEO TECHNICIAN: We're 5 back on record at 3:26 p.m. 6 - - - 7 (Whereupon, a discussion off 8 the record occurred.) 9 - - - 10 (Whereupon, Amerisource 11 Bergen-Zimmerman Exhibit-12, 12 MNKT1_0000291614-1620, was marked 13 for identification.) 14 - - - 15 BY MR. PIFKO: 16 Q. I've just handed you what's 17 marked as Exhibit-12. It's a document 18 Bates labeled MNKT1_0000291614 through -- 19 MR. CLUFF: This is another 20 one -- 21 BY MR. PIFKO: 22 Q. -- 1620. 23 MR. CLUFF: -- where we 24 obtained permission from</p>
<p>1 THE WITNESS: I'm not sure 2 what action -- I don't recall 3 getting the e-mail, so I don't 4 recall reading the e-mail and then 5 any action. 6 This is two weeks after we 7 put our program in place, which is 8 pretty much the points that 9 they're hitting on. 10 And I think this is in 11 September. And I spoke at their 12 conference, I think it was 13 November, and covered pretty much 14 these same points. So our program 15 was already meeting these 16 requirements. 17 MR. NICHOLAS: Mark before 18 you go to another document, it's 19 been two hours. Can we take a 20 break? 21 MR. PIFKO: Sure. 22 VIDEO TECHNICIAN: Going off 23 the record. 3:05 p.m. 24 - - -</p>	<p>1 Mallinckrodt's counsel prior to 2 its use today. 3 MR. NICHOLAS: Okay. 4 BY MR. PIFKO: 5 Q. Could you take a minute to 6 take a look at this document, please? 7 A. Yes. 8 Q. Let me know when you're 9 done. 10 I was only going to ask you 11 about a couple of things on here, in the 12 interest of time. Feel free to look at 13 it, but I can direct you to the couple of 14 questions. 15 Have you seen this document 16 before? 17 A. I don't recall seeing it 18 before. 19 Q. It says, HDMA, DMC expo, 20 2011. 21 Do you know what an HDMA, 22 DMC expo is? 23 A. HDMA has an annual 24 management conference, I'm assuming</p>
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<p>1 that's what they're referring to.</p> <p>2 Q. When you were on -- you've</p> <p>3 been -- you've had a role with respect to</p> <p>4 the HDMA for a long time now, right?</p> <p>5 You've had different roles.</p> <p>6 I think -- I forget, but you</p> <p>7 were on one committee and then you're on</p> <p>8 some other committee now, right?</p> <p>9 A. That's correct.</p> <p>10 Q. So you've always had an</p> <p>11 affiliation with the HDMA?</p> <p>12 A. Yes.</p> <p>13 Q. Have you attended this</p> <p>14 conference in the past?</p> <p>15 A. I have.</p> <p>16 Q. Do you believe you attended</p> <p>17 this one?</p> <p>18 A. I may have. It's like with</p> <p>19 the other one, I don't -- I haven't</p> <p>20 attended them the last -- for years. I</p> <p>21 just don't know when -- when I stopped</p> <p>22 attending.</p> <p>23 Q. You see at the top here, it</p> <p>24 says, Attendees included</p>	<p>1 interacted with before?</p> <p>2 A. I have.</p> <p>3 Q. It says she's chief policy</p> <p>4 and liaison, Drug Enforcement</p> <p>5 Administration.</p> <p>6 A. Correct.</p> <p>7 Q. What did she do, as far as</p> <p>8 your interactions with her?</p> <p>9 A. She would be one, if we had</p> <p>10 a policy question or a process question,</p> <p>11 that we would either write to her or call</p> <p>12 her.</p> <p>13 Q. It says here, Cathy gave a</p> <p>14 brief overview of hot topics current</p> <p>15 within the DEA.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. In conferences -- in HDMA</p> <p>19 conferences you do remember attending, do</p> <p>20 you remember the DEA presenting current</p> <p>21 topics of interest to the members of the</p> <p>22 industry at these conferences?</p> <p>23 A. Yes. There was usually a</p> <p>24 segment that DEA presented at.</p>
<p>1 AmerisourceBergen, Cardinal, H.D. Smith,</p> <p>2 McKesson, Lilly, Johnson & Johnson,</p> <p>3 Purdue, Sanofi, Aventis, AmeriCares and</p> <p>4 many more.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. So you believe you would</p> <p>8 always send someone to these conferences</p> <p>9 if you didn't attend yourself?</p> <p>10 A. Yes.</p> <p>11 Q. I just want to know, I want</p> <p>12 to ask you about your familiarity with</p> <p>13 some of the topics that were discussed</p> <p>14 here.</p> <p>15 This is -- the notes here</p> <p>16 are about a specific DEA session that</p> <p>17 occurred on March 7th at this conference.</p> <p>18 Do you see that just on the</p> <p>19 first page at the top?</p> <p>20 A. Yes. ^^</p> <p>21 Q. Do you know who Cathy</p> <p>22 Gallagher is?</p> <p>23 A. I do.</p> <p>24 Q. Is that someone you've</p>	<p>1 Q. One of these, if you scroll</p> <p>2 way down to the bottom,</p> <p>3 second-to-the-last bullet point, Increase</p> <p>4 of ER visits are 97 percent contributable</p> <p>5 to pharmaceuticals; opioids are the most</p> <p>6 frequent.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall that being a</p> <p>10 topic of discussion within the industry</p> <p>11 in 2011?</p> <p>12 MR. NICHOLAS: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: No.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. Do you recall discussing</p> <p>17 that with anyone at the HDMA at any</p> <p>18 point?</p> <p>19 A. I don't recall discussions</p> <p>20 regarding emergency room visits, no.</p> <p>21 Q. Do you have any reason to</p> <p>22 dispute this fact?</p> <p>23 MR. NICHOLAS: Object to the</p> <p>24 form.</p>

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<p>1 distribution centers, their 2 customer base.</p> <p>3 So part of our negotiations 4 with DEA, in 2007, is they wanted 5 to make sure that the distribution 6 centers had an understanding of 7 the customers that they were 8 servicing as well.</p> <p>9 And that was what the 10 training for the responsible 11 person in charge consisted of. 12 And that's what they're referring 13 to.</p> <p>14 So DOD accounts, this is in 15 the height of the Iraq War, and we 16 didn't want to be not holding up 17 orders to the DOD at this time. 18 So if they came through at night 19 and it wasn't something -- you 20 know, it wasn't suspicious, then 21 they had the ability to release 22 that order.</p> <p>23 BY MR. PIFKO:</p> <p>24 Q. How about chain or grocery</p>	<p>1 - - -</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. I'm handing you what has 4 been marked as Exhibit-19. It's a 5 document Bates labeled ABDCMDL 00002405 6 through 2418.</p> <p>7 Take your time to review it, 8 but, again, I just have some questions 9 about specific areas in here.</p> <p>10 Let me know when you're 11 ready.</p> <p>12 A. Okay.</p> <p>13 Q. Are you ready?</p> <p>14 This document is titled, 15 Order Monitoring Program, OMP, Setting 16 the Record Straight.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And it's talking about the 20 difference between the non-SAP, or S-A-P, 21 and the post-SAP system.</p> <p>22 Can you explain what that is 23 about?</p> <p>24 A. So we moved -- SAP is an</p>
<p>1 customers?</p> <p>2 A. It was all depending upon 3 their knowledge of the customer that they 4 were servicing from the distribution 5 center day in and day out.</p> <p>6 And these were all things we 7 were discussing with the DEA when we were 8 talking about holding -- because, again, 9 keep in mind, before 2007, orders were 10 reported after the fact. So DEA -- if 11 DOD or Cleveland Clinic placed an order 12 for medication that they needed the very 13 next day, they would get it; and if it 14 was suspicious, we would report it.</p> <p>15 With this the new program, 16 now you could be impacting patient care 17 at a hospital, surgery center or DOD, in 18 the event that in the middle of the night 19 they had to release that order.</p> <p>20 - - -</p> <p>21 (Whereupon, Amerisource 22 Bergen-Zimmerman Exhibit-19, 23 ABDCMDL 00002405-2418, was marked 24 for identification.)</p>	<p>1 operating platform that a lot of 2 manufacturers operate on, and we moved to 3 that operating platform.</p> <p>4 So this is a move from the 5 old operating platform for the company to 6 the new SAP operating platform.</p> <p>7 Q. And prior to the SAP system, 8 the system you employed was called STAR?</p> <p>9 A. I believe so.</p> <p>10 Q. I want to direct your 11 attention to Page 5 of the document. 12 That's 2409.</p> <p>13 Let me know when you're 14 there.</p> <p>15 A. Yes.</p> <p>16 Q. Frequently asked questions.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. These are questions that a 20 customer might ask?</p> <p>21 A. No. These are to the 22 distribution centers.</p> <p>23 Q. Okay. By the way, have you 24 seen this document before?</p>